

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUFINO TORRES,

Petitioner,

v.

No. 21-cv-0032 WJ/SMV

DWAYNE SANTISTEVAN,

Respondent.

ORDER PERMITTING AMENDMENT AND REQUIRING CURE

THIS MATTER is before the Court on Petitioner Rufino Torres's 28 U.S.C. § 2254 habeas petition [Doc. 1] ("Petition"), filed on January 12, 2021. Torres challenges his state convictions for burglary and larceny based on, *inter alia*, ineffective assistance of counsel and due process violations. *See generally* [Doc. 1]. About two weeks after filing the Petition, Torres filed a Motion to Amend. [Doc. 2] ("Motion"). The Motion elaborates on the claims listed in the Petition and raises additional grounds for relief. *See generally id.* It appears that Torres intends for the Motion to function as a supplement to the Petition. Because this proceeding is still in the screening phase and Respondent has not filed an answer, the Court will grant the Motion. *See* Fed. R. Civ. P. 15(a)(1) (allowing amendment as a matter of course before service or the filing of a responsive pleading). The Court will treat the Motion as a supplement to the Petition, and the two documents will function as the controlling pleading in this case. [Docs. 1, 2].

Before the Court will consider Torres's habeas claims, he must pay the \$5 filing fee or file a motion for leave to proceed *in forma pauperis* along with a six-month inmate account statement. *See* 28 U.S.C. § 1915. Torres must cure this deficiency no later than **April 23, 2021**. Finally, all

filings in this matter must include the case number (21-cv-0032 WJ/SMV). The failure to timely comply with this Order will result in dismissal of the Petition without prejudice and without further notice.

IT IS THEREFORE ORDERED that the Motion to Amend [Doc. 2] is **GRANTED**; and the Clerk's Office shall **RE-TITLE** that filing on the docket as a Supplement to the Petition.

IT IS FURTHER ORDERED that no later than **April 23, 2021**, Torres shall either pay the \$5 filing fee, or alternatively, file a motion for leave to proceed *in forma pauperis* along with an inmate account statement reflecting financial transactions between **July 12, 2020** and **January 12, 2021**.

IT IS FURTHER ORDERED that the Clerk's Office **MAIL** Torres a blank motion for leave to proceed *in forma pauperis*.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge